The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

| | |
|---|---|
| ZANGO, INC.,<br><br>Plaintiff,<br><br>v.<br><br>PC TOOLS PTY, LTD.,<br><br>Defendant. | NO. 07-CV-00797 JCC<br><br>PRAECIPE TO SECOND DECLARATION OF GREGG BERRETTA |

1. In paragraph 49 of Mr. Berretta's Second Declaration, Docket #25, he references "screen shots attached showing PC Tools detection of over 1,000 'infections' from a single installation of Zango." The screen shots referenced therein were not identified by exhibit number. This sentence is thus modified to read: "See screen shots attached as Exhibit 4 showing PC Tools detection. . . ."

2. In the exhibits to Mr. Berretta's Second Declaration, Exhibit 3 was inadvertently omitted. The exhibit is filed herewith. Zango notes that this document, and similar such documents, were previously filed with the Purcell declaration. *See* Docket #9, Exhibit B.

3. Attached to this Praecipe are a corrected set of Exhibits, which include Exhibit 3 and the unnumbered documents previously filed which are now properly numbered Exhibit 4.

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Dockets.Justia.com

DATED this 1st day of June, 2007.

**GORDON TILDEN THOMAS & CORDELL LLP**

By______________________________
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## CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

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# PC Tools acquires Novatix

"Cyberhawk" product continues PC Tools tradition of damaging Zango's software without user consent.

# PC Tools acquisition after Zango's filing

**SAN FRANCISCO, CA May 29, 2007** - PC Tools today announced the acquisition of Cyberhawk™ from Colorado-based Novatix Corporation and the establishment of a new advanced research office in Boulder. The acquisition adds a powerful new component to the advanced security solutions offered by the leading Internet security vendor.

"We were impressed with the exceptionally strong team at Novatix and their superior behavioral-based malware detection technology. The acquisition is of strategic importance for PC Tools as the technology is a perfect fit with our market leading security products," said Simon Clausen, CEO of PC Tools.

Novatix's flagship product, Cyberhawk™, features cutting-edge real-time behavioral protection technology that provides the perfect complement to traditional signature-based anti-malware programs. Cyberhawk's patent-pending ActiveDefense™ technology offers unsurpassed protection against both known and unknown viruses, worms, trojans, rootkits, buffer overflows and other forms of malware and provides effective protection against zero-day attacks.

"This new technology will help strengthen our zero-day coverage and improve our ability to detect emerging threats," said Clausen who explained that considering the strength of the current Novatix staff, and the depth of talent in the local market, it makes sense that Novatix's Boulder facility will continue to operate as an advanced research center focused on behavioral detection and emerging technologies. "Mike Kronenberg, the CEO of Novatix will remain on board as PC Tools' CTO of North American operations," Clausen added.

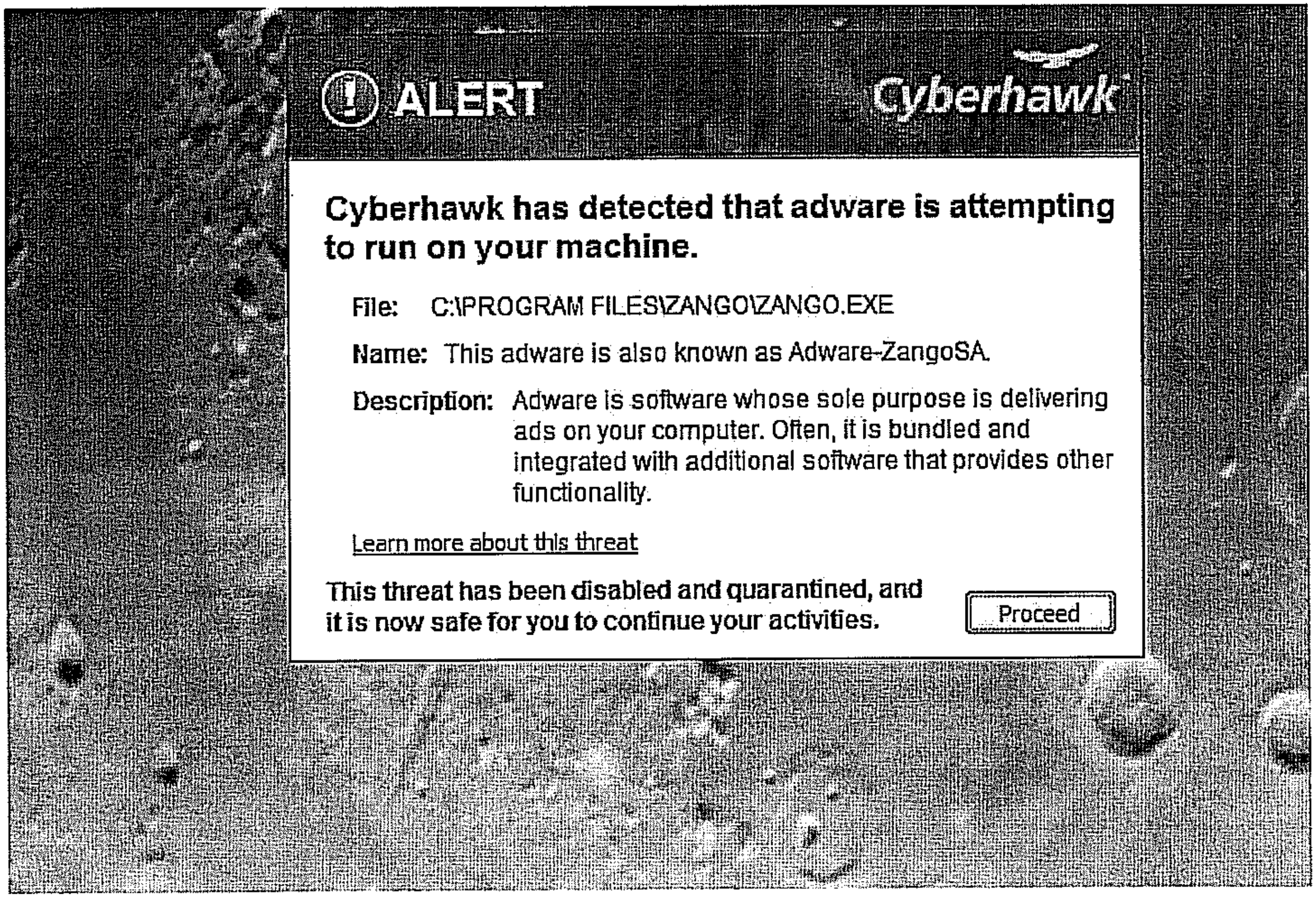
"We see this acquisition as a great fit for Novatix," said Kronenberg. "PC Tools is a leader in the anti-spyware and anti-virus space. Our combined efforts will ensure that consumers get the best protection possible. PC Tools' broad reach in the consumer marketplace ensures our highly effective technology will have an even greater impact."

"This acquisition is a part of our long term plan and underwent a rigorous evaluation process of best in class products; considerable attention was given to how the Novatix team and products would build synergy with PC Tools' offerings" said Michael Greene, Vice President of Product Strategy. "This is a major deal for us. It parallels our strategic business approach – by maintaining control of core technologies we create new opportunities for innovation."

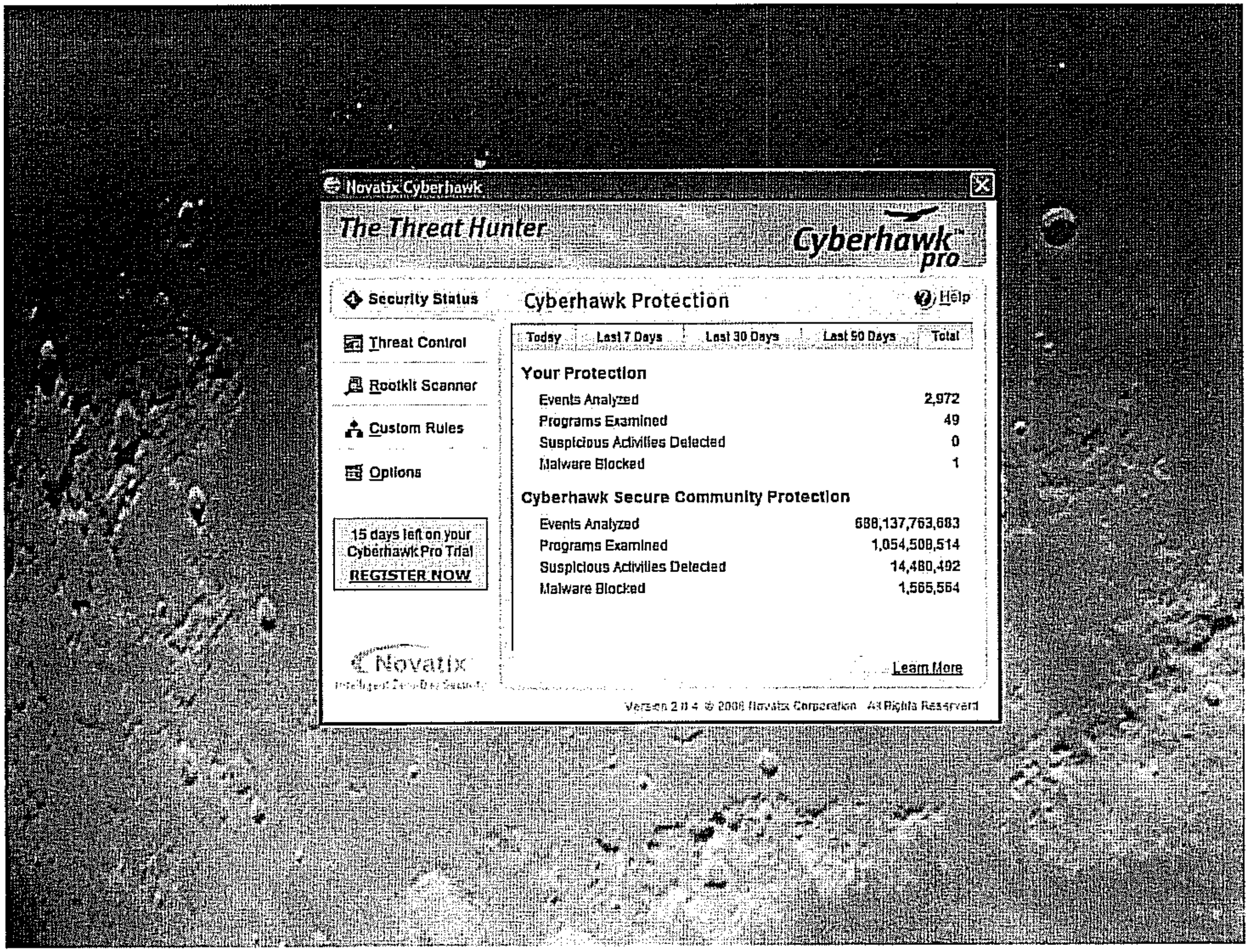
# "Cyberhawk" is yet another immediate threat to Zango's current and potential customers

- When Zango initially filed two weeks ago, PC Tools was offering the 5.0.0.169 version of its Spyware Doctor.
- In the past two weeks, PC Tools has released a 5.0.0.184, 5.0.0.185 and a 5.0.0.186 version of their software in addition to the currently shipping "Cyberhawk" product
- All screen shots taken on May 30th, the day after the PC Tools acquisition of Novatix

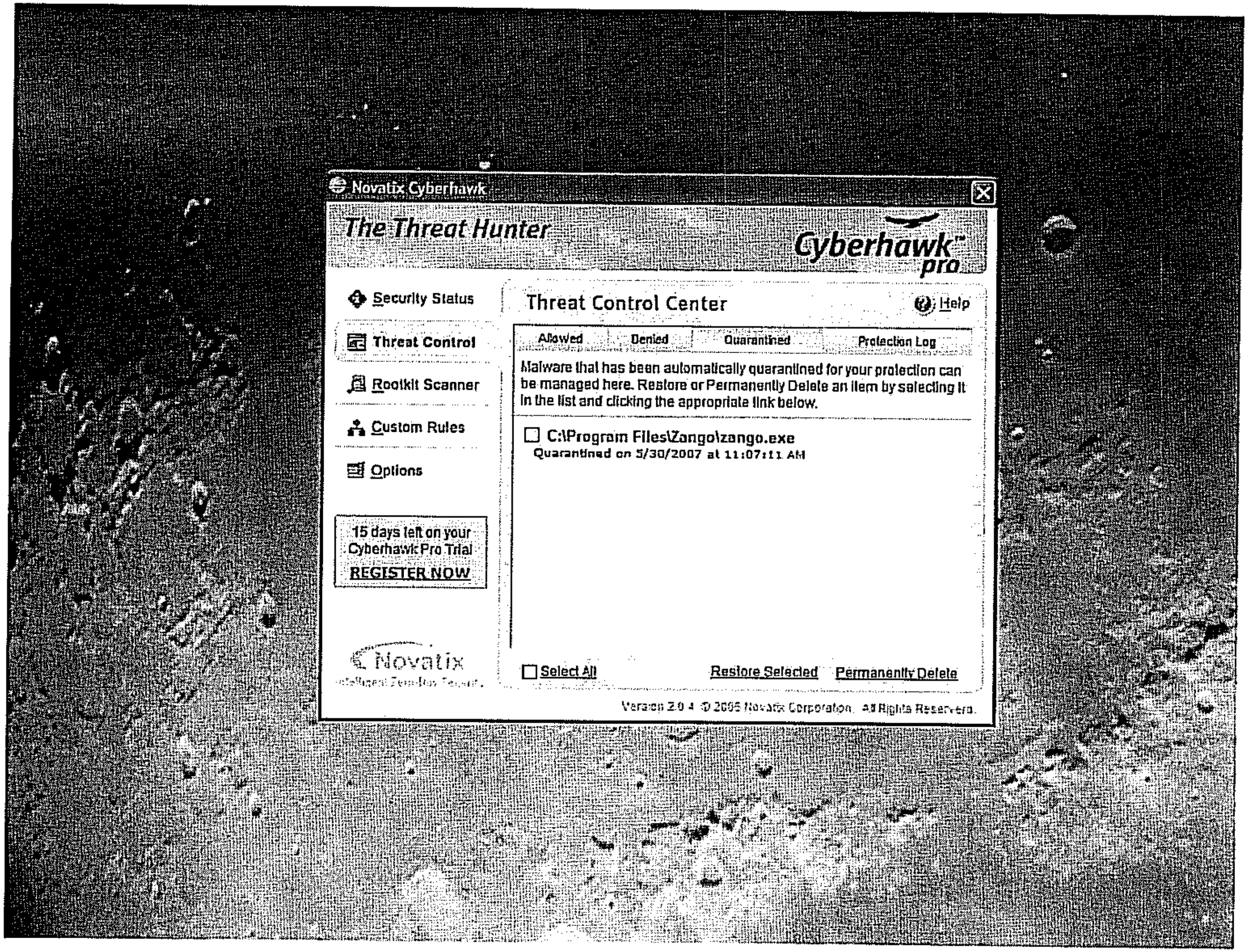
# Zango detected and "threat disabled"


ALERT
Cyberhawk
Cyberhawk has detected that adware is attempting to run on your machine.
File: C:\PROGRAM FILES\ZANGO\ZANGO.EXE
Name: This adware is also known as Adware-ZangoSA.
Description: Adware is software whose sole purpose is delivering ads on your computer. Often, it is bundled and integrated with additional software that provides other functionality.
Learn more about this threat
This threat has been disabled and quarantined, and it is now safe for you to continue your activities.
Proceed

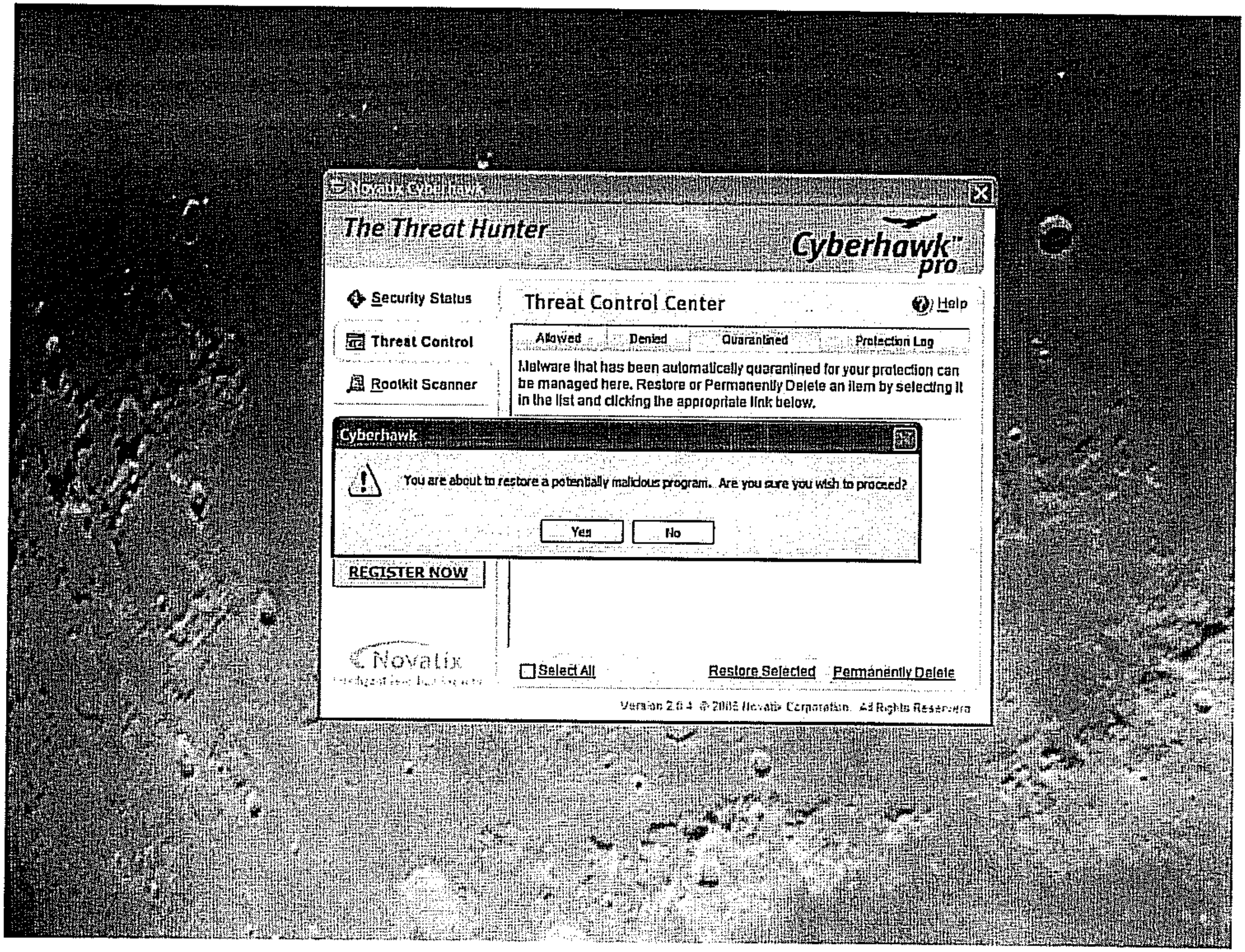
# 14 Million(!) Suspicious Activities Detected


Novatix Cyberhawk
The Threat Hunter
Cyberhawk pro
Security Status
Threat Control
Rootkit Scanner
Custom Rules
Options
15 days left on your Cyberhawk Pro Trial
REGISTER NOW
Novatix
Cyberhawk Protection
Help
Today
Last 7 Days
Last 30 Days
Last 90 Days
Total
Your Protection
Events Analyzed 2,972
Programs Examined 49
Suspicious Activities Detected 0
Malware Blocked 1
Cyberhawk Secure Community Protection
Events Analyzed 688,137,763,683
Programs Examined 1,054,508,514
Suspicious Activities Detected 14,480,492
Malware Blocked 1,565,564
Learn More

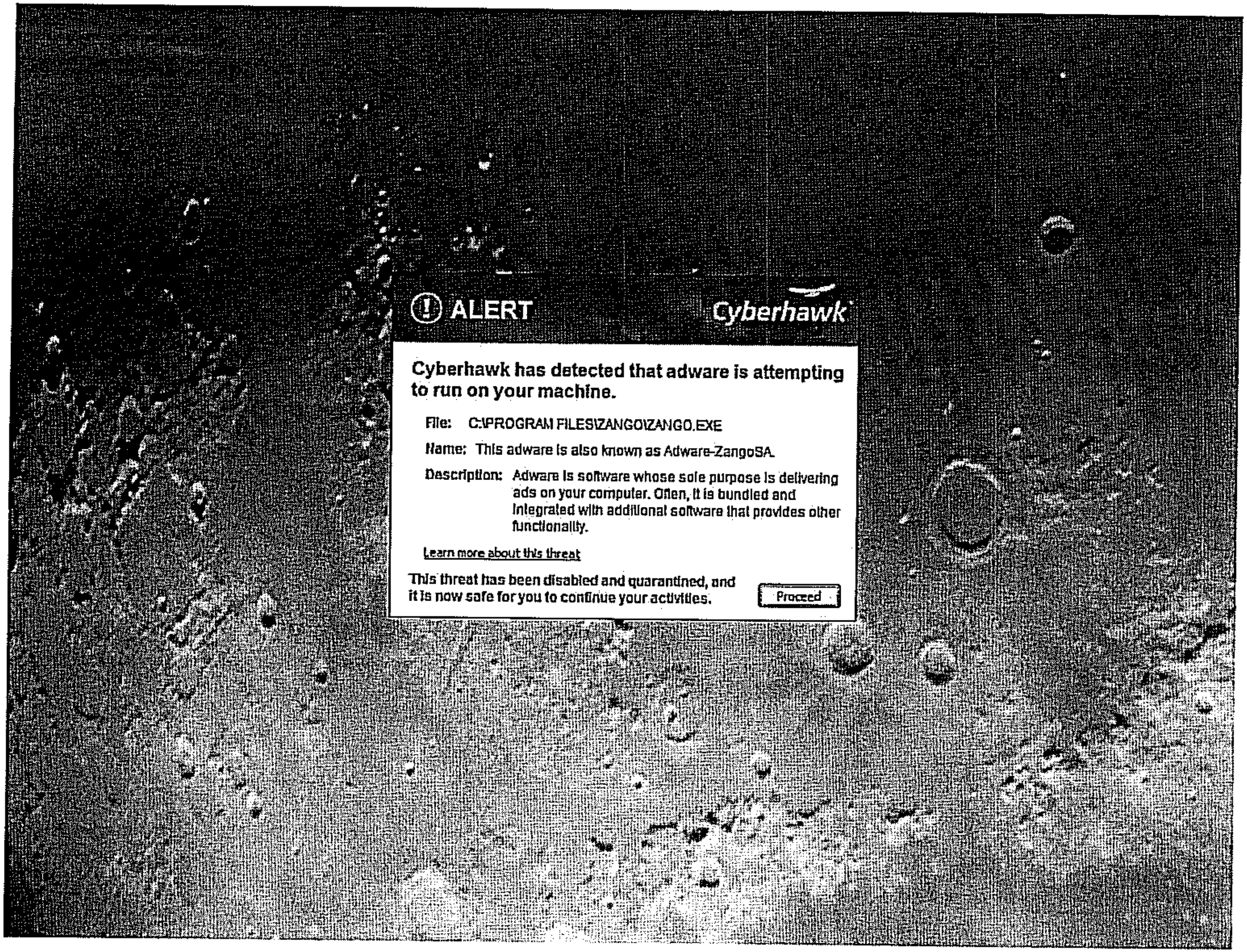
# Zango – Automatically "Quarantined"


Novatix Cyberhawk
The Threat Hunter
Cyberhawk pro
Security Status
Threat Control
Rootkit Scanner
Custom Rules
Options
15 days left on your Cyberhawk Pro Trial
REGISTER NOW
Novatix
Threat Control Center
Help
Allowed
Denied
Quarantined
Protection Log
Malware that has been automatically quarantined for your protection can be managed here. Restore or Permanently Delete an item by selecting it in the list and clicking the appropriate link below.
C:\Program Files\Zango\zango.exe
Quarantined on 5/30/2007 at 11:07:11 AM
Select All
Restore Selected
Permanently Delete

# Warning that Zango is "potentially malicious"


Novatix Cyberhawk
The Threat Hunter
Cyberhawk pro
Security Status
Threat Control
Rootkit Scanner
Threat Control Center
Help
Allowed
Denied
Quarantined
Protection Log
Malware that has been automatically quarantined for your protection can be managed here. Restore or Permanently Delete an item by selecting it in the list and clicking the appropriate link below.
Cyberhawk
You are about to restore a potentially malicious program. Are you sure you wish to proceed?
Yes
No
REGISTER NOW
Novatix
Select All
Restore Selected
Permanently Delete

# After accepting the "risks" Zango is disabled yet again (!)


ALERT
Cyberhawk
Cyberhawk has detected that adware is attempting to run on your machine.
File: C:\PROGRAM FILES\ZANGO\ZANGO.EXE
Name: This adware is also known as Adware-ZangoSA.
Description: Adware is software whose sole purpose is delivering ads on your computer. Often, it is bundled and integrated with additional software that provides other functionality.
Learn more about this threat
This threat has been disabled and quarantined, and it is now safe for you to continue your activities.
Proceed

# Cyberhawk damages Zango beyond any reasonable chance of working

- I installed Cyberhawk version 2.0.4 and it did not appear to damage Zango. I rebooted as instructed by Cyberhawk.
- After rebooting, I was greeting with a big ALERT that informed me that Cyberhawk detected adware on my machine, saying "this threat has been disabled and quarantined, and it is now safe for you to continue your activities." There are no user options. Clicking the "learn more about this threat" link takes me to a Google search for Zango.exe.
- Cyberhawk kills the Zango.exe process and removes it from c:\Program Files\Zango. Zango will obviously not show me ads, and I do not have access to content on Zango.com. The Zango toolbar continues to function uninterrupted.
- I can go into the Cyberhawk control panel, find the "Quarantined" tab under Threat Control, and restore Zango. Restoring it does not restart the Zango process, though. Unless I navigate to c:\Program Files\Zango and launch Zango.exe, I have to reboot for that to happen....
- ...but when I reboot, Cyberhawk informs me that I have adware on my machine! Ridiculous. In short, only advanced computer users are going to be able to use Zango with Cyberhawk running, and they will have to manually restore the Zango process every time they reboot.

# Spyware Doctor 5.0.0.169 is still available all over the internet

As of 5/31/07

# Spyware Doctor .169 is all over the internet available for download

Still causes the same harms that were originally the source of this complaint.

Despite PC Tools assertions, there is no Auto update feature contained in .169

The various website offering .169 is in addition to the millions of installed but not upgraded customers of .169 as downloaded from Google

The prevalence of .169 equates to on-going and irreparable harm to Zango

Only PC Tools can address the harm by updating the detection databases of these installed customers so that they no longer detect Zango software and prevent its installation

PC Tools can easily update the detection database even if the customer has chosen not to upgrade the client version. They do this many times a day as new threats are discovered.

All screen shots are from 5/31/07

Web Images Video News Maps Gmail more ▾ Sign in

Google 5.0.0.169 Search Advanced Search Preferences

**Web** Results **1** - **10** of about **40,200** for **5.0.0.169**. (**0.15** seconds)

Spyware Doctor **5.0.0.169** beta - Downloads - PC Authority
Spyware Doctor **5.0.0.169** beta. Preview the latest anti-spyware tool 10 March 2007 Platform: Windows 2000,Windows XP Type: time limited demo **...**
business.pcauthority.com.au/download/spyware-doctor-500169-beta.aspx - 22k - Cached - Similar pages

Spyware Doctor **5.0.0.169** Final :: Direct Download Free Software **...**
http://degrati2.dnsalias.com/site/Spyware.Doctor.**5.0.0.169**CRK.rar · http://www.divshare.com/download/277391-877. New comment. Comment. Send Add link.
www.degrati.com/index.php?no=596 - 15k - Cached - Similar pages

Spyware Doctor **5.0.0.169** Beta - System Utilities - System Security **...**
Spyware Doctor **5.0.0.169** Beta · KeyPass 4.5.4 · Digital MediaRescue Pro 4.4.2 **...** Spyware Doctor **5.0.0.169** Beta · System Safety Monitor 2.4.0.614 **...**
www.onlinedown.com/detail/5718.htm - 33k - Cached - Similar pages

Spyware Doctor **5.0.0.169** Keygen Warez Download Full Version Crack **...**
Spyware Doctor **5.0.0.169** Keygen, Spyware Doctor **5.0.0.169** Keygen Download, Spyware Doctor **5.0.0.169** Keygen Full, Spyware Doctor **5.0.0.169** Keygen Keygen, **...**
0dayaccess.com/dl_full_version_crack_serial_keygen_warez_Spyware_Doctor_5.0.0.169_Keygen.htm - 30k - Cached - Similar pages

> Spyware Doctor **5.0.0.169** - Final Warez Download Full Version Crack **...**
> Spyware Doctor **5.0.0.169** - Final, Spyware Doctor **5.0.0.169** - Final Download, Spyware Doctor **5.0.0.169** - Final Full, Spyware Doctor **5.0.0.169** - Final Keygen, **...**
> 0dayaccess.com/dl_full_version_crack_serial_keygen_warez_Spyware_Doctor_5.0.0.169_-_Final.htm - 30k - Cached - Similar pages

Spyware Doctor **5.0.0.169** - Final » Flmsdown.Net Free Full **...**
Spyware Doctor? provides three-way spyware protection for your PC through real-time threat blocking, advanced system scanning and immunization against known **...**
flmsdown.net/2007/03/23/spyware_doctor_500169_final.html - 82k - Cached - Similar pages

Download Spyware Doctor 5.0.0.186 FREE
Click here to start the download. Other Versions. Spyware Doctor 5.0.0.186 · Spyware Doctor 5.0.0.176 · Spyware Doctor **5.0.0.169** Beta **...**
www.toggle.com/lv/group/view/kl27132/Spyware_Doctor.htm - 14k - Cached - Similar pages

Fenopy : Spyware Doctor **5.0.0.169** FULL [MULTILANG] download
Spyware Doctor **5.0.0.169** FULL [MULTILANG] download download,Spyware Doctor **5.0.0.169** FULL [MULTILANG] download limewire, bit torrent,Spyware Doctor **...**
fenopy.com/torrent/Spyware_Doctor_5_0_0_169_FULL__MULTILANG_/NTUwNjM5/index.html&tab=related - 33k - Cached - Similar pages

CrackDB.com - Spyware Doctor **5.0.0.169**EXE

CrackDB.com - lagest cracks database. Most recent updates of keygens, cracks, serials for apps, programs and games! No Torrents!

crackdb.com/get_97366_Spyware.Doctor.5.0.0.169EXE_crack.html - 31k - May 30, 2007 -
Cached - Similar pages

[RS.com] - Spyware Doctor **5.0.0.169** - King Of Warez
Spyware Doctor **5.0.0.169** Guest Downloads. ... Reload this Page [RS.com] - Spyware Doctor **5.0.0.169**. User Name, Remember Me? Password ...
www.kingofwarez.com/showthread.php?p=42673 - 46k - Cached - Similar pages

1 2 3 4 5 6 7 8 9 10 **Next**

Download Google Pack: free essential software for your PC

5.0.0.169 Search

Search within results | Language Tools | Search Tips | Dissatisfied? Help us improve

---

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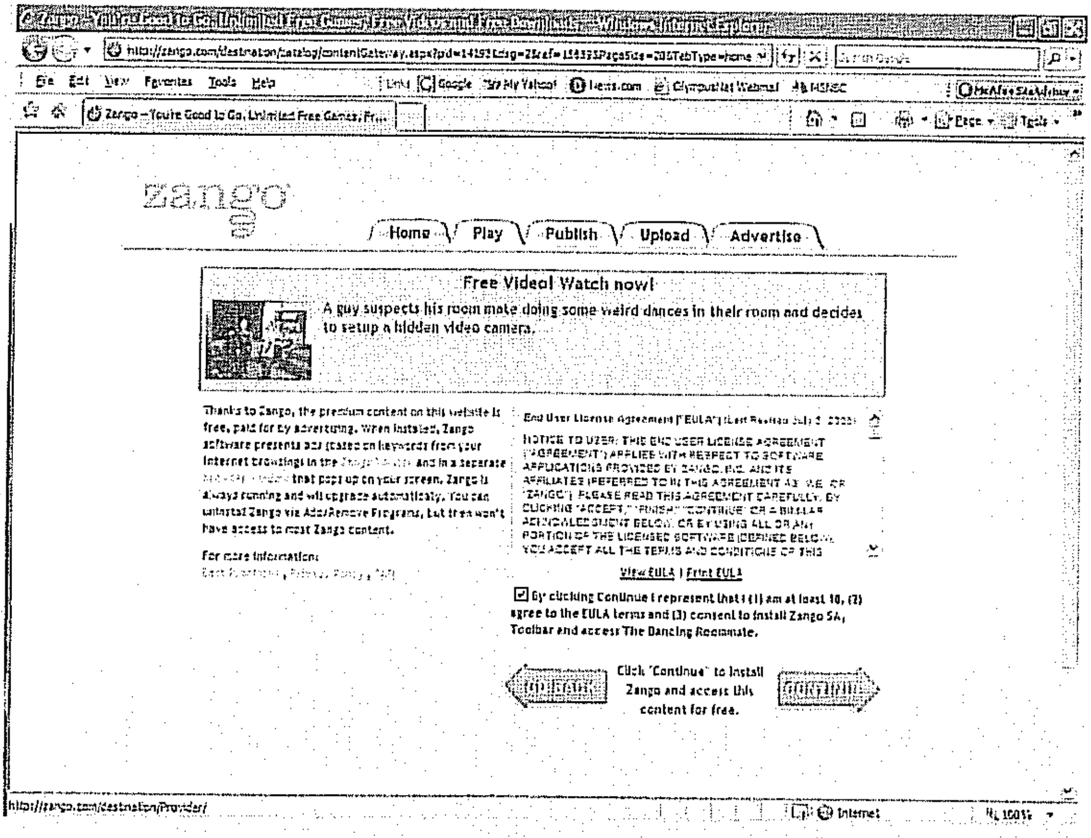
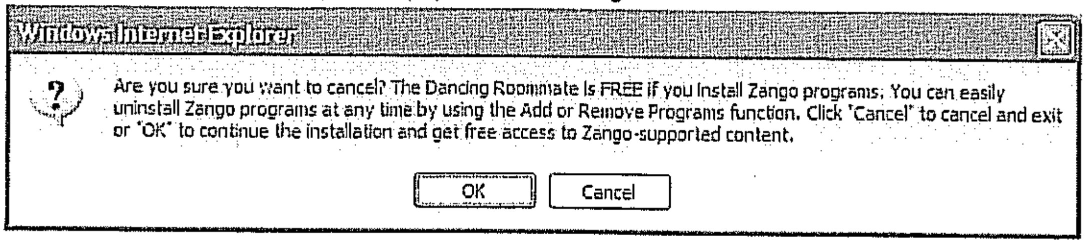
# APPENDIX

## ALL SCREEN SHOTS CAPTURED IN MAY 2007

**User Consent Interface Screen A at www.zango.com**


Home
Play
Publish
Upload
Advertise
Free Video! Watch now!
A guy suspects his room mate doing some weird dances in their room and decides to setup a hidden video camera.
Thanks to Zango, the premium content on this website is free, paid for by advertising. When installed, Zango software presents ads (based on keywords from your Internet browsing) in the … and in a separate … that pops up on your screen. Zango is always running and will upgrade automatically. You can uninstall Zango via Add/Remove Programs, but then won't have access to most Zango content.
For more information:
View EULA | Print EULA
By clicking Continue I represent that I (1) am at least 18, (2) agree to the EULA terms and (3) consent to install Zango SA, Toolbar and access The Dancing Roommate.
Click "Continue" to install Zango and access this content for free.
Internet

User clicks "Go Back" button, which pops another dialogue


Windows Internet Explorer
Are you sure you want to cancel? The Dancing Roommate is FREE if you install Zango programs. You can easily uninstall Zango programs at any time by using the Add or Remove Programs function. Click 'Cancel' to cancel and exit or 'OK' to continue the installation and get free access to Zango-supported content.
OK
Cancel

User clicks "Cancel" button and returns to Zango Content Library.

# Spyware Doctor
# Vs.
# Zango and Hotbar

[ zango ]

# Spyware Doctor Version

I downloaded Google Pack then entered my SD registration info. SD was automatically updated. (when using non registered version, SD behaves as before - Destroys Zango/Hotbar installation)

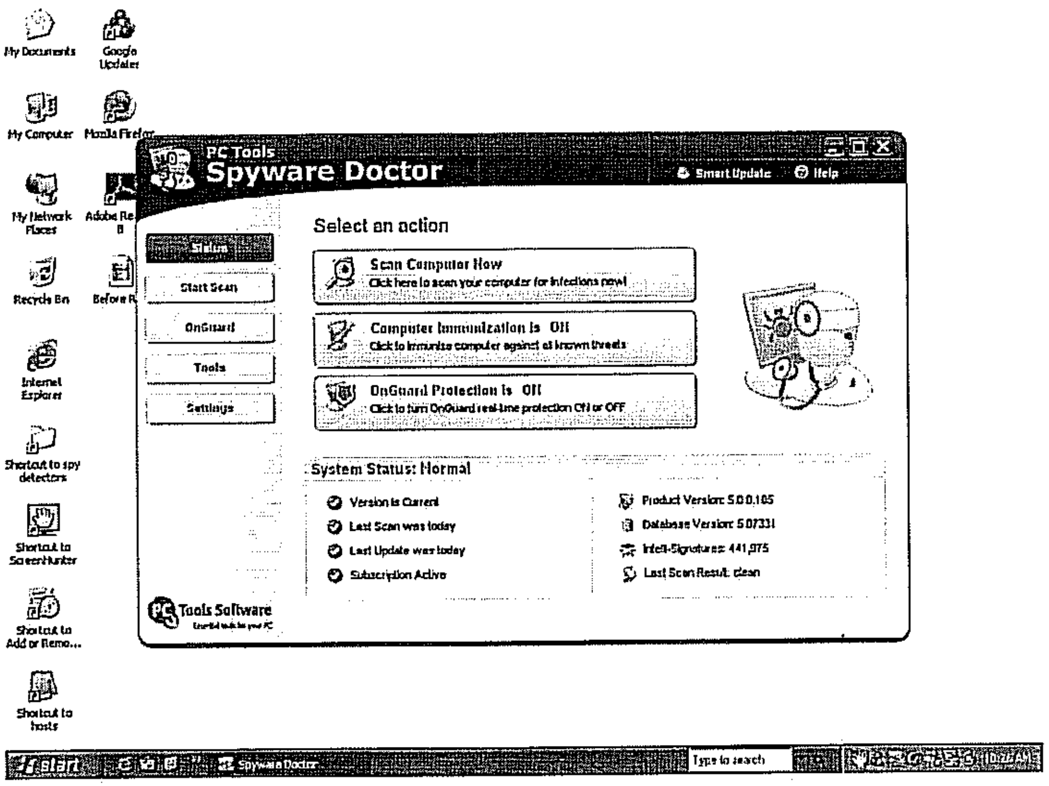
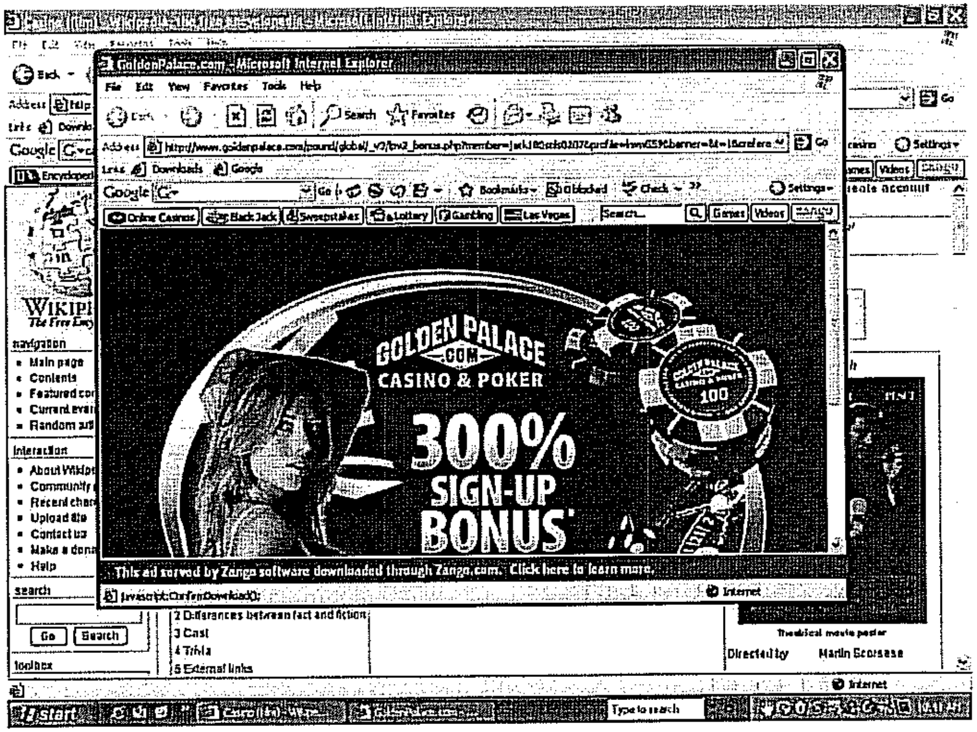

My Documents
Google Updater
My Computer
Mozilla Firefox
My Network Places
Recycle Bin
Internet Explorer
Shortcut to spy detectors
Shortcut to ScreenHunter
Shortcut to Add or Remo...
Shortcut to hosts
PC Tools
Spyware Doctor
Smart Update
Help
Status
Start Scan
OnGuard
Tools
Settings
Select an action
Scan Computer Now
Click here to scan your computer for infections now!
Computer Immunization is Off
Click to immunize computer against all known threats
OnGuard Protection is Off
Click to turn OnGuard real-time protection ON or OFF
System Status: Normal
Version is Current
Last Scan was today
Last Update was today
Subscription Active
Product Version: 5.0.0.185
Database Version: 5.07331
Intelli-Signatures: 441,975
Last Scan Result: clean
PC Tools Software
start
Spyware Doctor
Type to search

Exhibit 4 Page 19

# Spyware Doctor
# Vs.
# Zango

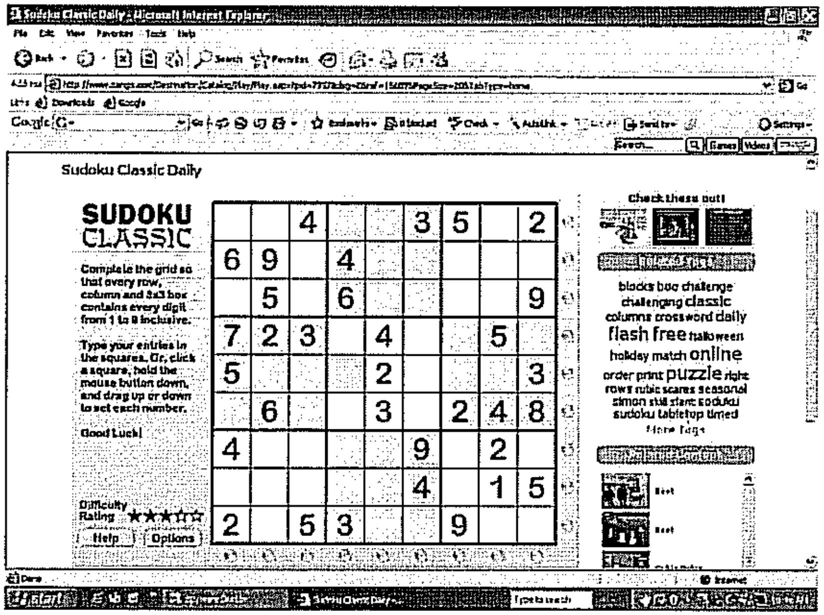
# Spyware Doctor vs. Zango

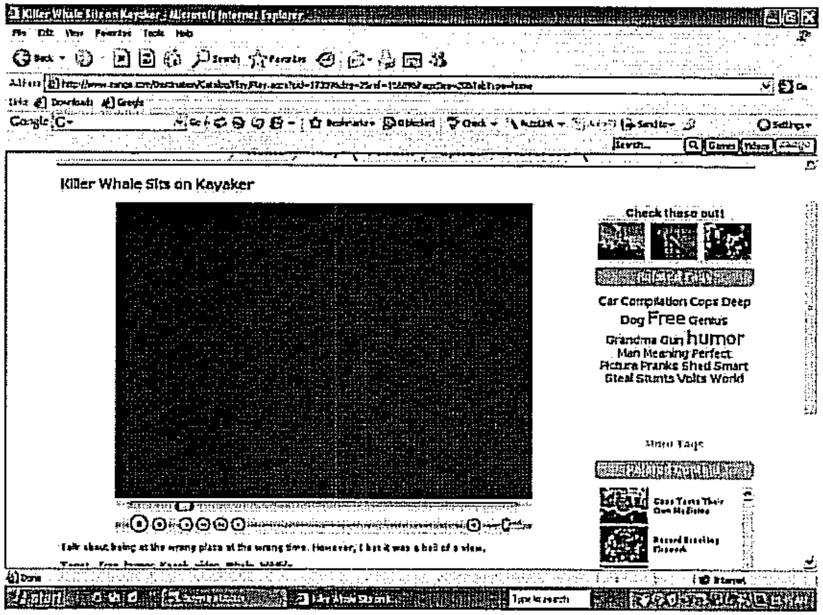
## After Installation popups work:


GoldenPalace.com - Microsoft Internet Explorer
GOLDEN PALACE .COM
CASINO & POKER
300%
SIGN-UP
BONUS
This ad served by Zango software downloaded through Zango.com. Click here to learn more.

# Spyware Doctor vs. Zango

## Sudoko and Video work:


Sudoku Classic Daily
SUDOKU CLASSIC
Complete the grid so that every row, column and 3x3 box contains every digit from 1 to 9 inclusive.
Type your entries in the squares. Or, click a square, hold the mouse button down, and drag up or down to set each number.
Good Luck!
Difficulty Rating
Help
Options
Check these out!
blocks boo challenge challenging classic columns crossword daily flash free halloween holiday match online order print puzzle right rows rubic scares seasonal simon still start sudoku sudoku tabletop timed

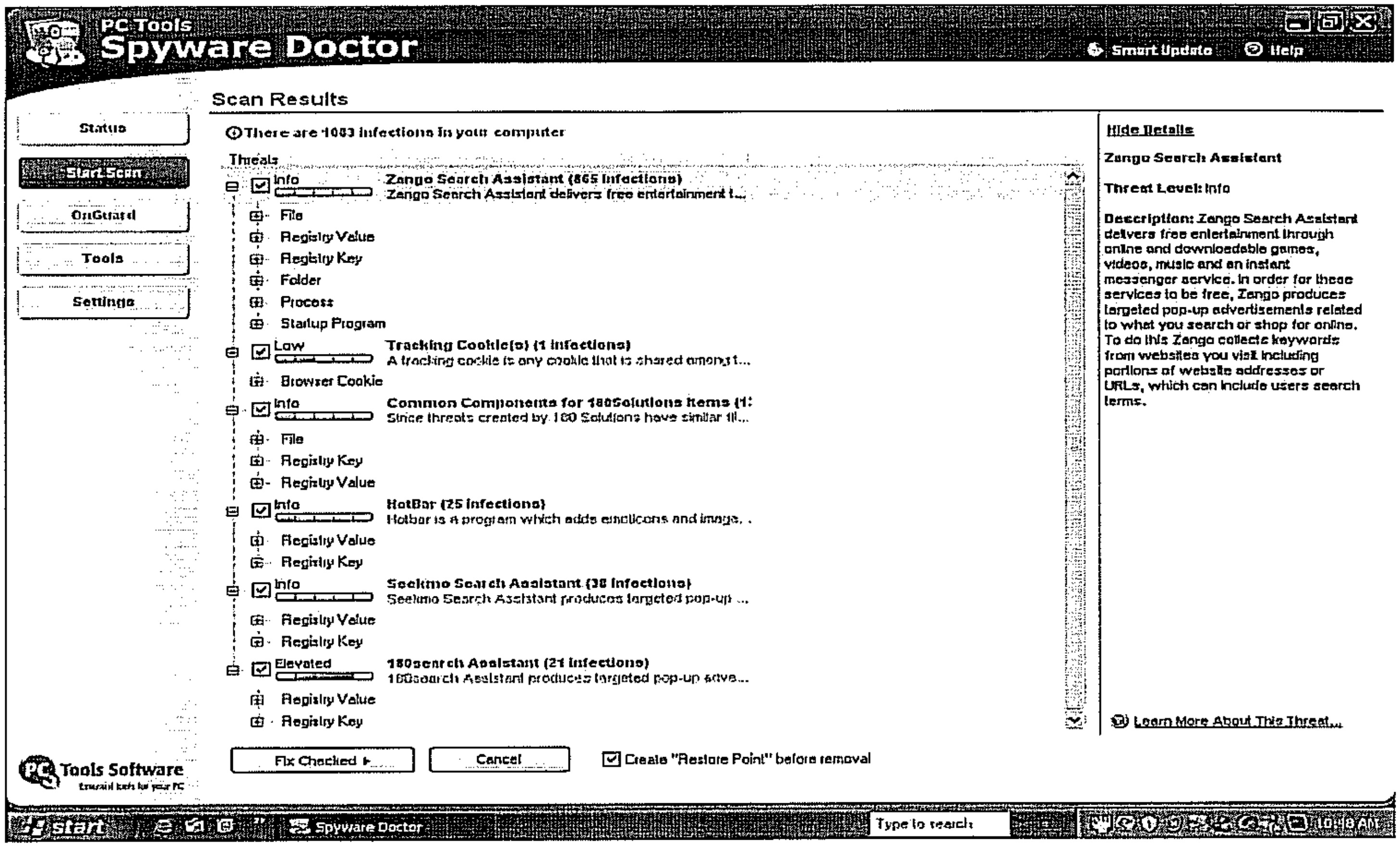

Killer Whale Sits on Kayaker
Check these out!
Car Compilation Cops Deep Dog Free Genius Grandma Gun humor Man Meaning Perfect Picture Pranks Shed Smart Steal Stunts Volts World

[zango]

Exhibit 4 Page 22

# Spyware Doctor vs. Zango

Scan Results - Still detects Zango and removes it completely when choosing "Fix checked":


PC Tools
Spyware Doctor
Smart Update
Help
Scan Results
Status
Start Scan
OnGuard
Tools
Settings
There are 1083 infections in your computer
Threats
Info
Zango Search Assistant (865 infections)
Zango Search Assistant delivers free entertainment t...
File
Registry Value
Registry Key
Folder
Process
Startup Program
Low
Tracking Cookie(s) (1 infections)
A tracking cookie is any cookie that is shared amongst...
Browser Cookie
Info
Common Components for 180Solutions Items (1:
Since threats created by 180 Solutions have similar fil...
File
Registry Key
Registry Value
Info
HotBar (25 infections)
Hotbar is a program which adds emoticons and image. .
Registry Value
Registry Key
Info
Seekmo Search Assistant (38 infections)
Seekmo Search Assistant produces targeted pop-up ...
Registry Value
Registry Key
Elevated
180search Assistant (21 infections)
180search Assistant produces targeted pop-up adve...
Registry Value
Registry Key
Hide Details
Zango Search Assistant
Threat Level: Info
Description: Zango Search Assistant delivers free entertainment through online and downloadable games, videos, music and an instant messenger service. In order for these services to be free, Zango produces targeted pop-up advertisements related to what you search or shop for online. To do this Zango collects keywords from websites you visit including portions of website addresses or URLs, which can include users search terms.
Learn More About This Threat...
Fix Checked
Cancel
Create "Restore Point" before removal
PC Tools Software
start
Spyware Doctor
Type to search

[zango]

Exhibit 4 Page 23

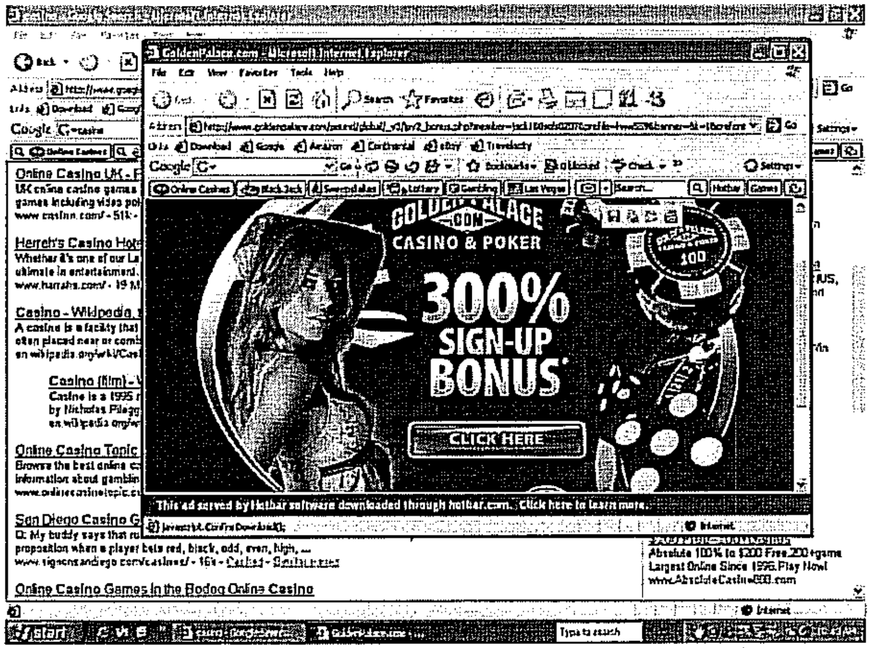
# Spyware Doctor
# Vs.
# Hotbar

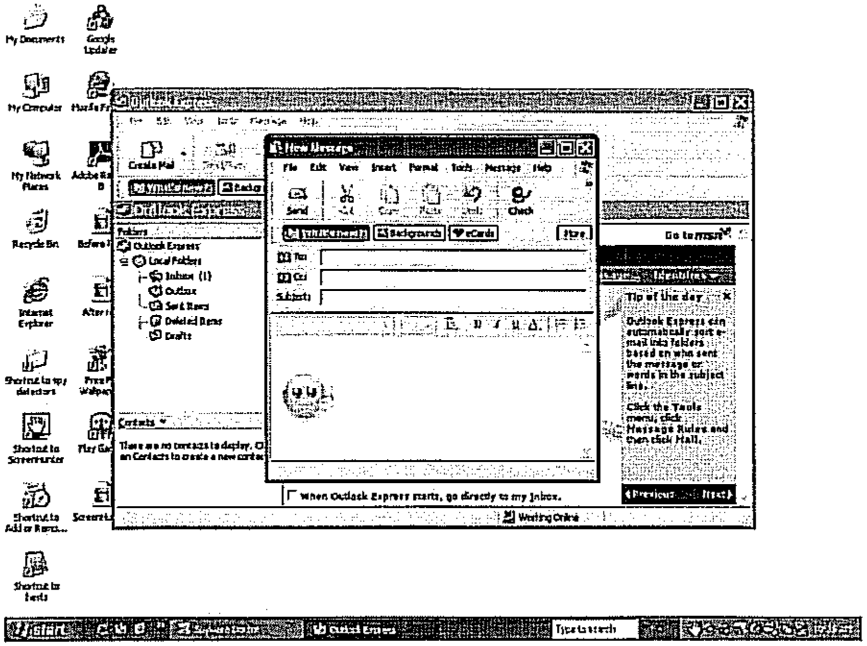
[ zango ]

7

# Spyware Doctor vs. Hotbar

After installation popups and email toolbar feature work:


GoldenPalace.com - Microsoft Internet Explorer
CASINO & POKER
300%
SIGN-UP
BONUS
CLICK HERE
This ad served by Hotbar software downloaded through hotbar.com. Click here to learn more.
Online Casino Games in the Bodog Online Casino

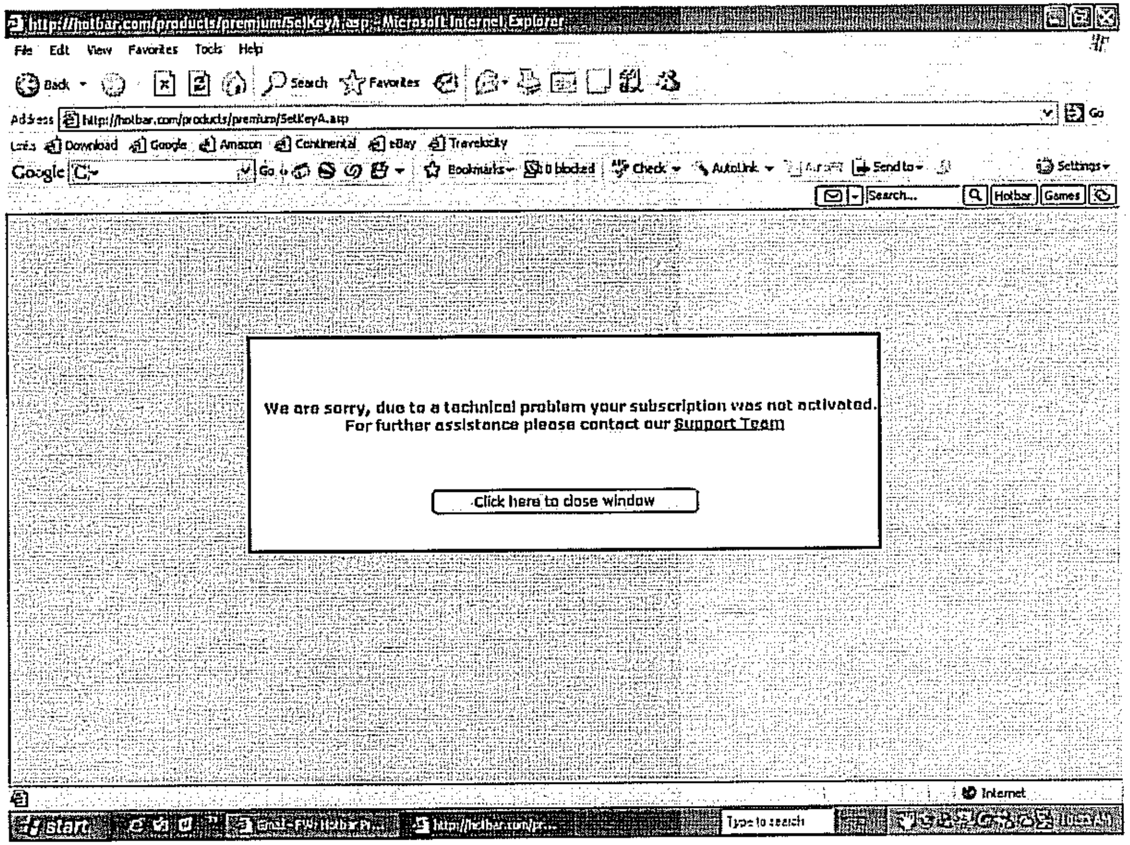

New Message
Outlook Express
Tip of the day
When Outlook Express starts, go directly to my Inbox.

[zango]

Exhibit 4 Page 25

# Spyware Doctor vs. Hotbar

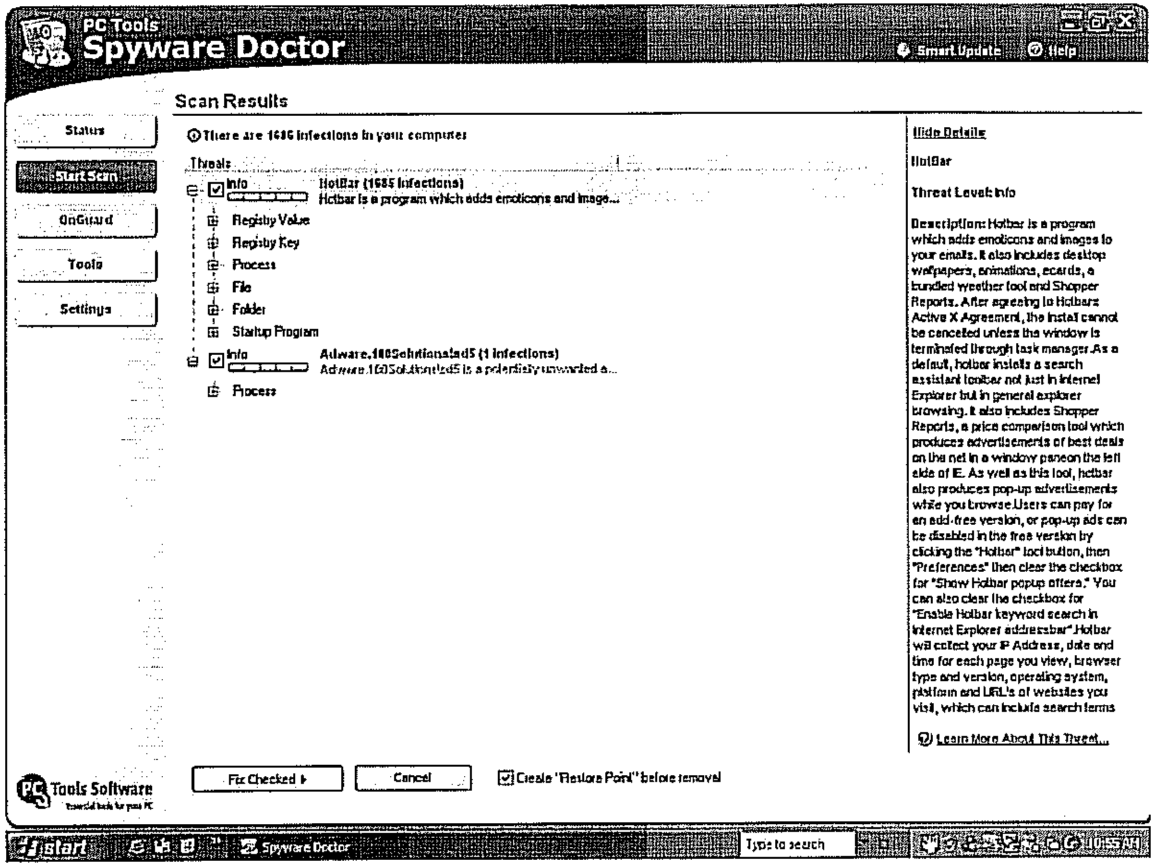
## Can’t activate the Hotbar premium license


http://hotbar.com/products/premium/SetKeyA.asp - Microsoft Internet Explorer
File Edit View Favorites Tools Help
Back Search Favorites
Address http://hotbar.com/products/premium/SetKeyA.asp
Go
Links Download Google Amazon Continental eBay Travelocity
Google
Bookmarks 0 blocked Check AutoLink Send to Settings
Search...
Hotbar Games
We are sorry, due to a technical problem your subscription was not activated.
For further assistance please contact our Support Team
Click here to close window
Internet
start
Type to search

[ zango ]

# Spyware Doctor vs. Hotbar

Scan Results - Still detects Hotbar and removes it completely when choosing “Fix checked”:


PC Tools
Spyware Doctor
Smart Update
Help
Status
Start Scan
OnGuard
Tools
Settings
Scan Results
There are 1686 infections in your computer
Threats
Info
HotBar (1685 Infections)
Hotbar is a program which adds emoticons and image...
Registry Value
Registry Key
Process
File
Folder
Startup Program
Info
Process
Hide Details
HotBar
Threat Level: Info
Description: Hotbar is a program which adds emoticons and images to your emails. It also includes desktop wallpapers, animations, ecards, a bundled weather tool and Shopper Reports. After agreeing to Hotbars Active X Agreement, the install cannot be canceled unless the window is terminated through task manager. As a default, hotbar installs a search assistant toolbar not just in Internet Explorer but in general explorer browsing. It also includes Shopper Reports, a price comparison tool which produces advertisements of best deals on the net in a window pane on the left side of IE. As well as this tool, hotbar also produces pop-up advertisements while you browse. Users can pay for an add-free version, or pop-up ads can be disabled in the free version by clicking the "Hotbar" tool button, then "Preferences" then clear the checkbox for "Show Hotbar popup offers." You can also clear the checkbox for "Enable Hotbar keyword search in Internet Explorer addressbar". Hotbar will collect your IP Address, date and time for each page you view, browser type and version, operating system, platform and URL's of websites you visit, which can include search terms
Learn More About This Threat...
Fix Checked
Cancel
Create "Restore Point" before removal
Tools Software
start
Spyware Doctor
Type to search

[zango]

Exhibit 4 Page 27

Thank You

11

[ zango ]